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LAND TRANSFER REFORM.

AN ADDRESS

DELIVERED BEFORE THE

CANADIAN INSTITUTE, TORONTO,

DECEMBER, 1ST, 1883,

BY

J. HERBERT MASON,

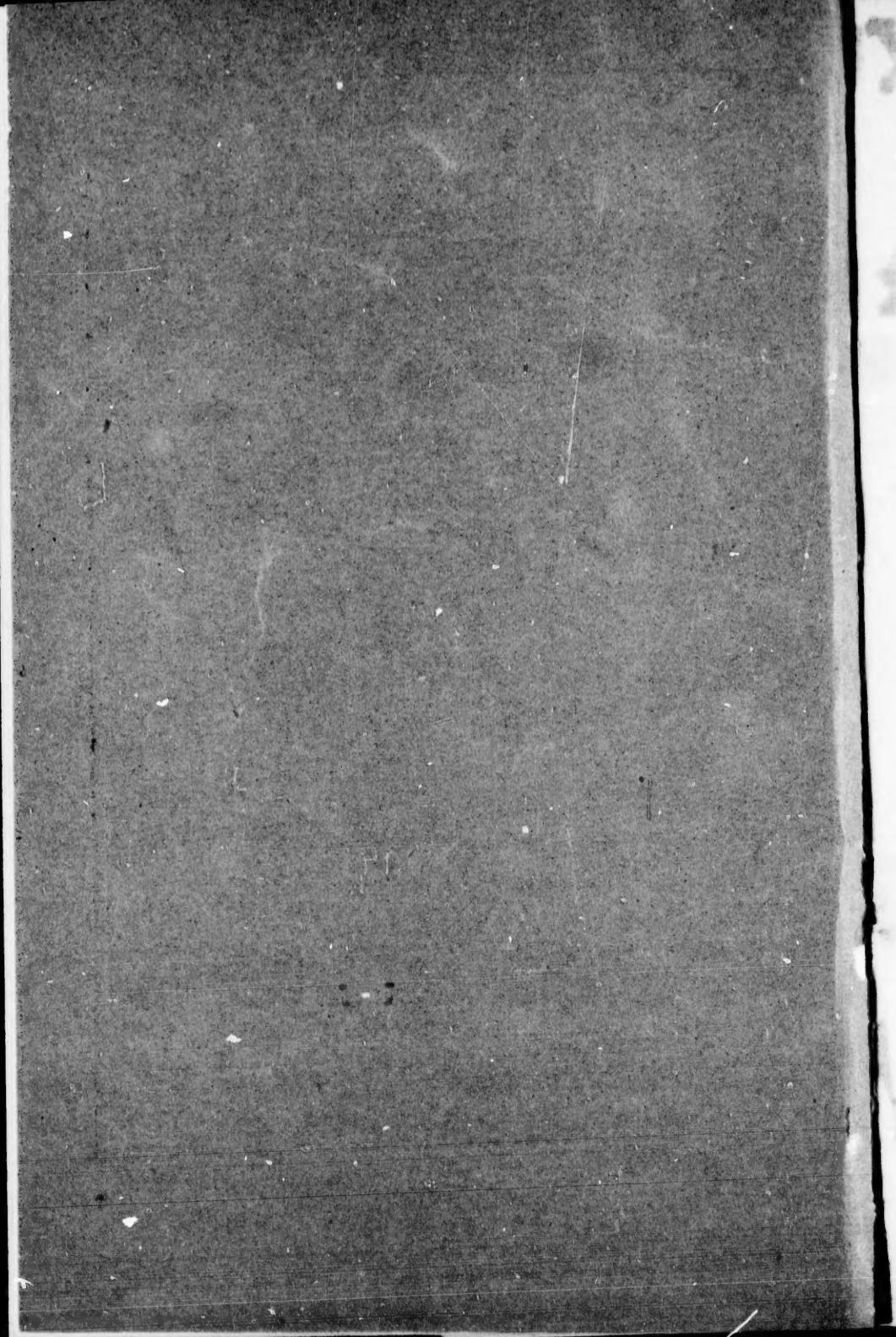
*Managing Director of the Canada Permanent Loan and Savings Company,
and President of the Canada Land Law Amendment
Association.*

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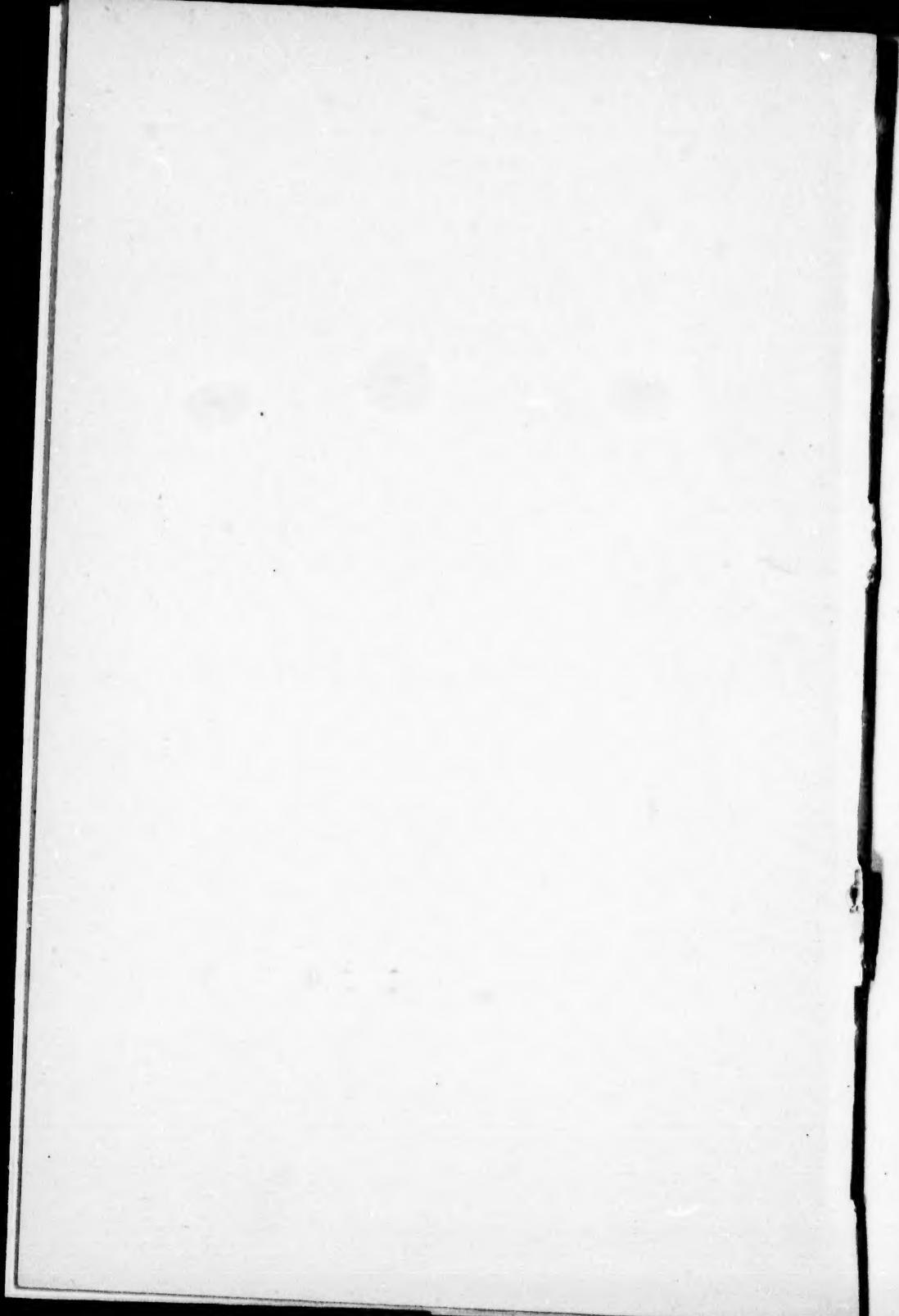
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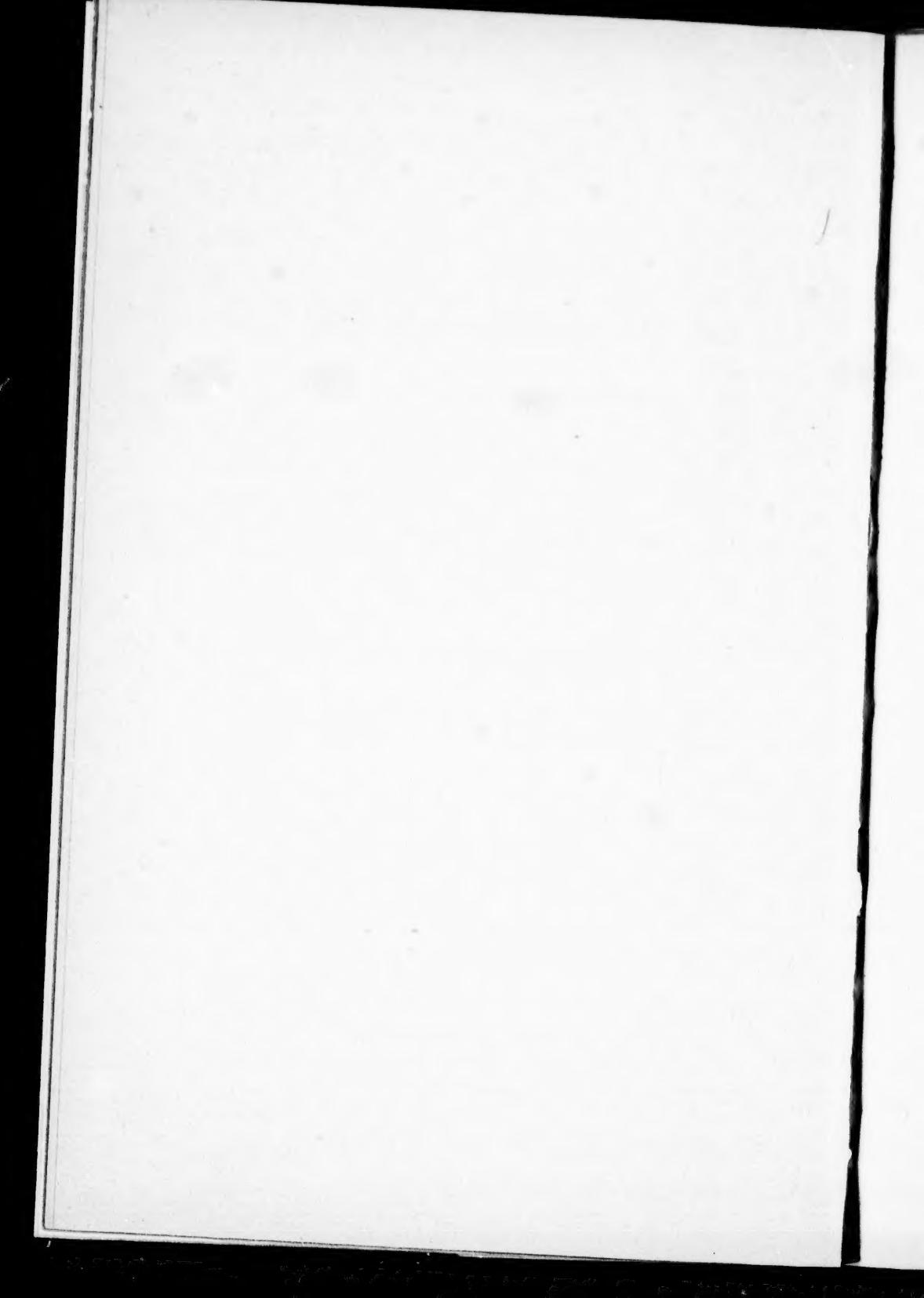
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LAND TRANSFER REFORM.

Gentlemen of the Canadian Institute, and Ladies and Gentlemen :—

The President of the Institute has done me the honor to invite me to prepare a paper on the subject of Land Transfer Reform, and I cheerfully accepted his invitation because I desire to provoke discussion, and because I believe that at present there are few topics of more general interest, or which have stronger claims to your consideration. In Canada the ownership of the soil is so widely distributed, that every man is more or less directly interested in real estate, and nearly every man is, has been, or may expect to be, a land owner.

For a period of more than twenty-five years it has been my fortune to be in almost daily communication with professional conveyancers on subjects relating to the title and tenure of land. Seeing the difficulties they have to encounter, and the trouble, annoyance, and expense to which land owners are frequently subjected, and being often called upon to examine and weigh the various questions raised, and by balancing practical probabilities against legal possibilities, to determine whether the risk of accepting an imperfect title might be taken or not, I have been led to enquire why it is that real estate is burdened with a method of transfer so costly, dilatory, cumbersome, and uncertain, as compared with other kinds of property. That question has been asked in England, in every British Colony, in every State of the neighboring Republic, in fact wherever English law prevails, and has failed to elicit a satisfactory answer. In default of other reason, in view of the antiquity of the system, and the immense amount of learned labor bestowed upon it, the conclusion generally accepted, was that it must be one of the

natural and unavoidable evils of life, that had to be patiently endured ; as inevitable as the flow of time, or the tides, or the payment of taxes.

Modern enquiry which has irreverently laid bare so many time honored delusions, refuses to accept this theory, claiming that the system is of human invention, a relic of feudal and unenlightened times, and bears the impress of the comparatively absurd practices and customs of those days. High legal authorities now admit that the system is indefensible. As well might we imitate the social customs of centuries ago, instead of rejoicing in the superior civilization, culture and refinement of the present day. It would be interesting to treat the subject historically and trace how the present system of land transfer and tenure, grew out of the old feudal system under which land was generally held as a fief for life, subject to the performance of military, or other service. Time however will not permit. All I purpose to do is to take our system as we find it, and compare it, as briefly as may be, with the Torrens system, which it is proposed to introduce.

THE PRESENT SYSTEM.

Speaking generally, as the law now stands in Ontario and several other Provinces, no man, can be sure that he is the owner of land, unless he can shew not only that he has paid for, and has possession of it, and may be registered as owner, but that his deed is the last link in an unbroken chain of properly drawn, executed, and registered conveyances, back to the patentee of the Crown, or at least for sixty years back.

To do this effectually, his Solicitor may have to critically examine hundreds of documents—as is the case with some properties in this city—many of which may not affect the property in question, and he may perhaps find after all, that he is unable to determine with certainty, whether his client has a good title or not. As a chain is no stronger than its weakest link, if one link is defective, or missing, the title fails as far as the records are concerned, and must be sustained by

outside evidence, which after the lapse of years it is often difficult, and sometimes impossible, to obtain. A link may be missing in the Registry office, owing to the title having been acquired by possession, by heirship, or by devise; for one of the anomalies of the system is, that while a will may be recorded in the lifetime of the maker, and while it is therefore inoperative, a will may be actually in force but not be registered on the land affected by it, and, as a matter of fact, many are not.

Would such a system be endured if it applied to personal property, which can now be transferred in a few minutes and at little or no expense whatever? Let us suppose that every purchaser of registered Government, or municipal bonds, bank stock, or any of the vast railway, mining, shipping, mortgage, or other corporate interests, the outcome of modern civilization, was required to examine the chain of title from the first issue to the present ostensible owner, to see that every previous transfer had been properly drawn, properly executed, by the proper parties, that it contained this particular property, and that other transfers recorded on the same page and mixed up with them did not; that each previous owner had paid his taxes; that he was of age; that he was unmarried, or if married, that his wife was twenty-one years of age and joined in the transfer; that if a previous owner died intestate, all his heirs joined in the transfer, that all were of age and unmarried, or if married, that their wives, or husbands were of age, and joined; and further that for several years at least, the sheriff had held no writs of execution against any of the owners; what, if all this were necessary, would be the effect on the market value of such property? Ready convertibility, and certainty of ownership, being important elements in determining the worth of any investment, it is manifest that the effect would be to detract materially from its value. Yet all this troublesome, expensive, and time-consuming procedure, has to be undertaken at every transfer of real estate, no matter of how small extent, or of how little value.

The method of land transfer, and the Registry Laws in force in Ontario, are considered as perfect as any in existence, that aim at being simply a record of deeds and documents which have to be examined, and their legal effect pronounced upon, every time the title is investigated. They are free from some of the difficulties that arise under the systems in operation in New York, and some other of the United States ; but the following remarks, taken from the New York *Herald*, are measurably as applicable here, as they are there :

" Lately the Jumel property was cut up into 1,383 pieces or parcels of real estate, and sold at partition sale. There appears to have been about three hundred purchasers at that sale, and no doubt each buyer, before he paid his money, carefully employed a good lawyer to examine the title to the lot or plot that he had bought ; so that three hundred lawyers, each of them carefully examined, and went through the same work, viz.,—the old deeds and mortgages and records affecting the whole property (for as it had never been cut up before each had to examine the title of the whole, no matter how small his parcel), and each of them searched the same volumes of long lists of names, and picked out from the 3,500 volumes of deeds and mortgages in the New York Registrar's office the same big, dusty volumes of writing, and lifted them down and looked them through—in all 300 times, the very same labor.

" Evidently 299 times that labor was thrown away—done over and over again uselessly.

" And the clients, those buyers, together, paid 300 fees to those lawyers (who each earned his money), but evidently 299 of those fees were for repetitions of the very same work.

" By and by, twenty years from now, instead of only 300 owners of those Jumel plots, the whole 1,383 lots will be sold and built upon, and 1,383 new purchasers will again pay 1,383 lawyers 1,383 fees for examining that same Jumel title, only the fees will be larger, for there will, by that time (at the present rate of growth, and unless a remedy is soon applied), be fully 10,000 big folio volumes in the new Hall of Records which the Legislature has just authorized to be built in the city, and the whole 1,383 fees will be for mere repetitions of labor, so far as the whole Jumel estate title is concerned, and will be practically wasted.

“ COST OF SEARCHING A TITLE.

“ Not only that, but to-day, in examining that title for a purchaser, his lawyer carefully puts in official searches. He makes a requisition on the Registrar for all deeds, conveyances, mortgages and instruments in writing on record in his office affecting the parcel whose title he is examining, and, of course, the Registrar carefully returns on his search all the old deeds, &c., affecting the whole property—because they affect the parcel—and he charges and gets by law five cents for each year for each name searched against for deeds, and five cents per year per name for mortgages. Altogether, say \$20 is paid by each purchaser to the Registrar for those searches ; but as there were 300 purchasers, and they put in 300 searches, the Registrar gets 300 times \$20 for the same work ; and twenty years hence 1,383 purchasers will again pay the then Registrar 1,383 times \$20, or more, for a search showing those very same facts.

“ This sort of thing is daily repeated, year in and year out, in this city, over the whole of its surface.

“ And the same thing happens in regard to loans on bond and mortgage. Every man who thus lends money must have the title examined, and very properly so, and the borrower has to pay for it—the same old searches against the same old names—and pay the same old fees.

“ A HEAVY TAX ON REAL ESTATE.

“ The tax which the real estate of New York city thus annually pays, amounts to more than one per cent. of the real value of the property sold and mortgaged ; and it is safe to say that at least one-half of this heavy burden is the result of useless repetition, of the want of a good system in responsible hands, and is thrown away.”

So serious has the evil become in the United States that companies with corporate powers and large capital have been formed in Baltimore, Philadelphia, Boston, Washington, Louisville, and probably elsewhere, whose business it is to guarantee titles to land. They are operated by professional conveyancers, who thoroughly investigate the titles submitted to them, and if they accept the risk, charge such proportionate premium as may be warranted by the circumstances of

the case. If there were no hope of obtaining a change of system, a Company of this kind would be organized here. In Toronto a piece of land has changed hands five times since January last, and the title has been examined by the respective solicitors of each of the five purchasers, at an expense far greater than under the Torrens' system would be required to quiet the title forever. How much better than the guarantee of a Company would it be to have a system of land transfer under which it is unnecessary to go behind the present registered owner ; and under which every registered transfer is as indefeasible as a grant from the Crown.

No person who has not had experience in land transactions, can form any idea of the numberless traps, and pitfalls, into which unwary conveyancers may fall, and which in spite of all precautions, experienced professional men do not always escape. Did time permit I could relate many such instances that have come under my own observation. Let the following suffice.

1. On examining an official abstract of title to a certain piece of land, it appeared that one of the deeds had been executed, not by the owner in person, but for him, under a power of attorney, which was produced, and was in proper form. The proceeding seemed to be quite regular; but the careful solicitor, who was investigating the title, asked for proof that the power of attorney was in force at the time the deed under it was made. This was regarded as an unnecessary particularity on his part ; but being insisted on, search was made, and at length a tombstone was found in an English churchyard, the inscription on which showed that the person who gave the power of attorney had been dead two years when the deed in question was executed. As the power had thus lapsed the title was still in the heirs of the deceased, who were not aware of the disposition that had been made of their property, and were not bound by it. The person who appeared on registry as the owner, who had paid for, and was in possession of the land, had no title to it.

2. A man in the County of Glengarry claimed to be the owner of a farm, and applied for a loan upon it, producing as evidence of his title the patent to his father, and his father's will, duly registered, devising the property to him. This appeared on registry to be a very simple title, and the property being of sufficient value, the application was accepted, the mortgage prepared and registered, and the money was about to be paid over, when the man was asked incidentally, how long his father had been dead. "Dead!" he said; "my father is not dead." "How, then, can you claim title under his will?" he was asked. "Oh," he replied, "he has made his will, and I thought by recording it my title would be all right,"—not being aware, it appeared, that his father might revoke his will at pleasure. The money was not advanced.

3. Some fifty years ago a man, say Smith, sold a farm in the County of Ontario to another man, say Brown, who paid for it and took possession. Upon this farm a thriving town has since sprung up. On investigating the title to one of the town lots the solicitor asked for the old deeds of the farm lot, one of which was the deed from Smith to Brown. On examination it appeared that the land was duly given, granted, bargained, sold, aliened, transferred, released, enfeoffed, conveyed and confirmed by Smith to Brown—words which would be more than sufficient to change the ownership absolutely of any other kind of property—but that the words "his heirs and assigns" having been omitted, Smith only conveyed an estate for life, and on Brown's death the land reverted to Smith and his heirs. Here was an awkward state of things, involving the title and property of hundreds of innocent holders. What was to be done? Smith had been dead some years, leaving an only son, who fortunately did not insist on the rights which the law gave him. He was approached and reminded of the sale of the land by his father, and for a small consideration consented to execute a quit claim deed. His father having been paid for the property, as an honest man, he could not do otherwise; but many a man under such

circumstances would have had serious doubts as to whether his father might not have intentionally made the deed as it was, and would have considered that he was entitled to the benefit of the doubt, and to whatever the law gave him. A similar case occurred in the town of Brockville, where the claimant went so far as to bring twenty-eight actions of ejectment against a number of people, many of whom were able to shew forty-nine years' quiet possession, and had never dreamt of their titles being questioned, or even questionable. He was only got rid of, by being paid a large sum of money. In both these cases the titles had been examined and passed many times, and by men of high standing in the legal profession.

4. Back in the forties a shiftless individual, say Tramp, deserted his wife and child and a small farm of little value, in the County of Middlesex, and left for parts unknown. After some time it was reported that he was killed in California, his wife married again—a man, say Johnson, by whom she had a large family of children. Twenty-seven years after Tramp's disappearance, his daughter as his heiress, and Johnson and his wife, conveyed the property. Robinson a purchaser, went into possession and made improvements, but after a time was disturbed by sinister rumors that Tramp was still alive, and, after an absence of thirty-three years, he actually re-appeared and claimed the farm, which had now become valuable. It does not appear that he set up any claim to the wife. In fact there is little doubt that he came back with the connivance, if not at the instigation of the Johnsons. He brought an action in ejectment against the man in possession, whose legal advisers defended him on the ground, among others, that he had a good title against Tramp, by possession. But after a long and expensive law suit, it was decided by the Court of Appeal that Mrs. Johnson was still Mrs. Tramp, that through her he had been in possession during all the long years of his absence, quite ignoring the fact that Johnson had held possession of the land and wife also. The innocent purchaser was dispossessed,

the wretched confederates divided, and quarrelled over, their gains, and the man Tramp disappeared into the darkness from which he had so unexpectedly emerged.

These are of course exceptional cases, but similar examples might easily be multiplied. Enough has been said to illustrate the necessity for a thorough and systematic examination of every title. As it is impossible to say where a defect may lurk, every link in the chain, whether there be five or five hundred, must be carefully scrutinized. But excepting in the new settlements, where the land has been recently alienated from the Crown, and few transfers have been made, it is seldom that this is practicable. When land is sub-divided, the title deeds which have been executed previous to the sub-division, must remain with the original owner, or one of the owners of the subdivisions, and to ascertain where such deeds are to be found is frequently a matter of great difficulty, to say nothing of the danger of their being lost or destroyed. The expense of getting copies is such that only rarely, and in large transactions, is it insisted on. In the older counties where lands have passed through several hands, and especially in cities, towns, and villages, in very few cases, even with all the information attainable, will the examining solicitor incur the responsibility of giving an unqualified certificate that a title is good. The purchaser, or mortgagee, must accept some risk. It is true that under the Act for Quieting titles, anyone interested can apply to the Courts, and at considerable expense, have his title quieted, and made indefeasible up to the time he obtains a certificate of title. But as the property at once falls back under the old system, fresh complications arise. The title does not stay quieted. Cases are known where a title has been thus quieted, and in a few years has become as difficult and complicated as before. Under the Torrens' system a title once quieted, is quieted for ever. If the present system continues, as transfers multiply, difficulties and dangers proportionately increase, involving a corresponding increase in the uncertainty, expense

and delay, attendant upon every transaction in which land is concerned. No improvement of the present system affords any effectual remedy. A radical change is necessary. Registry of title, not simply a registry of deeds ; the abolition of general liens and all charges created by operation of law without registration ; and the reduction of the chain of title to one indefeasible link are what is wanted. This inestimable boon, which a few years ago would have been looked upon as an impossibility, is now practically within our reach.

THE TORRENS' SYSTEM.

As a Canadian, I regret that it did not fall to the lot of one of our countrymen to discover and apply this great remedy. Neither can England, nor the United States claim credit for it, though in both countries its necessity and value have been recognized. To have been the inventor of the Torrens' system is an honor any man might covet. However simple and self-evident, when propounded and understood, the original bright thought was as much an effort of genius as the the invention of the steam engine, or the telephone. Some seven-and-twenty years ago, it occurred to a gentleman residing in Adelaide, South Australia, that there was no good reason why land should not be conveyed by registration, in the same simple way that ships are transferred. The system then in operation there, and in the other Australian colonies, was one of conveyance by deed and registration, substantially the same as that now in force in Ontario. Upon promulgating his theory he was met with opposition, and derision. Gentlemen learned in the law shook their bewigged heads, and said in effect "Can any good thing come out of Nazareth?" For this bold innovator did not belong to the legal profession, but was simply an officer in Her Majesty's Customs. Lawyers are naturally, and very properly, slow to adopt untried experiments in the laws affecting property, more especially when suggested by laymen, and perhaps there is no subject upon which they are more conservative than the laws affecting

the tenure and transfer of land. These laws have been consecrated by antiquity, and the labors of the most eminent legal minds, and their ramifications affect in numerous ways the civil relations of a large proportion of the community. But with the spirit of a true reformer Mr., now, Sir Robert Torrens, resolutely persevered. Opposition rather stimulated than daunted him. Following up the original idea he elaborated what is known as the Torrens' system. His arguments were unanswerable, and he soon convinced a majority of the people and of the Legislature, that he was right. In 1858 the first crude measure to give effect to his ideas was passed by both Houses of the Legislature of South Australia, and became law. In 1861 it was repealed to make way for an improved measure which time and experience had shown the necessity for. In 1878 further amendments were made, but since that date no further changes have been found necessary.

The success and popularity of the Torrens' System in South Australia speedily led to its adoption in other colonies. Similar measures were introduced and passed in Queensland in 1861, in Victoria, and New South Wales, in 1862, in Tasmania in 1863, in New Zealand in 1870, in Western Australia in 1874, and later in Fiji. Strange to say, while we in Ontario have been asleep, or trying to patch up the old system, the Torrens' system has been for twenty-two years in operation in Vancouver Island, having been introduced in 1861, and extended to the whole of British Columbia in 1870. The law and practice differ in some respects in the various colonies, but the main features of the system are identical in all.

Imagine for a moment what would have been the present position of land titles in Ontario, and the vast amount of time and useless expenditure, which would have been saved if the system had been adopted here when it was in Vancouver. Thousands of properties, including all those since patented, would now have been in the enjoyment of the new system, and thousands of complications might have been avoided. Although better

never late, still better late than never ; and whatever difficulties may now have to be met in making the change, they will be increased by time, and, therefore, the sooner it is made the better. Fortunately the system is not now an untried experiment. Many of the leading lawyers of this province, and of Manitoba, have declared themselves in favor of its immediate introduction. Full details of the laws and practice of these countries where it is in force are at hand, and afford invaluable information for our legislators. In September, 1882, the Government of the Straits Settlements, in Southern Asia, dispatched their Commissioner of Lands, W. E. Maxwell, Esq., of Singapore, to the several Australasian colonies to enquire into the working of the Torrens' system of Registration of Title, and from his able and exhaustive report I cull the following paragraphs. The whole report will repay perusal. Many interesting details are omitted from want of space :

EXTRACTS FROM MAXWELLS' REPORT.

" The Torrens' system offers to the owners of land, alienated from the Crown prior to the coming into operation of the Act, the opportunity of causing their lands to become subject to a law which will free them forever from the old system of conveyancing by deed, while imposing upon them a certain new procedure.

" Land once brought under the system cannot be withdrawn from its operation, but all dealings with it must, thenceforth, be conducted as the Act directs.

" Alienated land not brought under the operation of the Act remains subject to the general law regarding real property, conveyances, deeds of mortgage, etc., affecting them, continue to be drawn up in the old forms, and to be registered in the General Registry office.

" The old and new systems of Transfer and Registration continue, therefore, to exist side by side.

* " Land bought from the Crown subsequent to the introduction of a Real Property Act in a Colony is under the Act

*** This and the six following paragraphs are quoted *mutatis mutatis* from a ' Handy Book on the Land Transfer Act ' (New Zealand).

ipso facto. The Crown Grant is registered under the Act without the grantee taking any steps in the matter. The old system of conveyancing, therefore, cannot be applied to land bought from the Crown after the introduction of the Torrens' system, but all dealings with such land must be conducted on the system of *registration of title*.

"Any other land may be brought under the Act on the application of the persons interested. The application, with the deeds, is left at the Lands Titles' Office, and the title is there investigated by the officers appointed for that purpose. If it be found that the title, although perhaps not technically perfect is yet secure against ejectment and against the claims of any other person, the land will be brought under the Act, and the proprietor, or his nominee, will receive a certificate of title.* It is, of course, possible that the certificate of title may, through error, issue to the wrong person and that injustice may be done. In such case the person injured has a remedy in damages against the Government, and, in order to form a fund to meet claims of this nature, a fee is charged of a halfpenny † in the pound on the value of all land brought under the Act. On the issue of the certificate, the old deeds, if they relate exclusively to the land applied for, are cancelled and retained in the Office. If they relate to other property, they are returned, each deed being marked as cancelled, so far as relates to the land brought under the Act. In any case, they are of no use as to the land brought under the Act, since from thenceforth the certificate of title is conclusive evidence that the person named in it, is entitled to the land it describes. The certificate of title operates as a Government guarantee that the title is perfect. It is indefeasible, and there is no going behind it.

"A certificate of title is issued to every person entitled to any estate of freehold in possession in land under the Act.

"Every certificate is in duplicate. One duplicate is given to the proprietor, the other is retained in the Lands Titles' Office. The certificates in the office constitute the register book, which, in the words of Mr. Torrens, is the pivot on which the whole

"* In England, where the Torrens' system has been introduced, the law provides for the issue of three kinds of certificates. 1st an absolute certificate—2nd a qualified certificate—and 3rd a possessory certificate. It may be found advisable in Ontario to follow the English practice in this respect as being more suited to our circumstances than the Australian."—J. H. M.

† In Tasmania the fee is only one farthing in the pound.—J. H. M.

mechanism turns. Every certificate is marked with the number of the volume and the folium of the register book. Crown Grants of land bought since the Acts came into operation are also issued in duplicate, one of which is bound up in the register book, and such grants are, in all respects, equivalent to certificates of title.

"So far, it will be said, the title is simplified, but how is this simplicity to be retained—how will future complications be prevented? This is the problem which the Act endeavours to solve.

"For the purpose of facilitating transactions, printed forms of transfer, mortgage, lease, and other dealings are to be procured at the Lands Titles' Office. Any person of ordinary education can, with very little trouble, learn to fill them up in the more simple cases, without professional assistance. If a proprietor holding a certificate of title wishes to sell the whole of the land included in it, he fills up and executes a printed form of *memorandum of transfer* which may be endorsed to the purchaser. The transfer is presented at the Office, and a memorial of the transfer is recorded by the proper officer on both duplicates of the certificate of title.* The purchaser, by the recording of the memorial, stands in precisely the same position as the original owner. If only a part of the land in a certificate is to be transferred, such part is described in the memorandum of transfer, the transfer is noted on both duplicates of the original certificate, a fresh certificate is issued to the purchaser for the part transferred, and the original certificate is noted as cancelled with respect to such part. This process is repeated on every sale of the freehold, and it will thus be seen, that every person entitled to a freehold estate in land under the Act has but one document to show his title, through however many hands the property may have passed, and such document vests in him an absolutely indefeasible title to the land it describes.

"If the proprietor wishes to mortgage or lease his land, or to charge it with the payment of a sum of money, he executes in duplicate, a memorandum of mortgage, lease, or encumbrance, in the form provided in the Act, altered so as to meet the particular circumstances of the case. This is presented at the Lands Titles' Office with the certificate of title : a memorial of

* One handed in with the transfer, and the other already in the office being bound up in the Register Book and constituting a folium of it. The "memorial" is a short memo, occupying a few lines only.

the transaction is entered by the proper officer on the certificate of title, and on the duplicate certificate forming the register book. The entry of this memorial constitutes registration of the instrument, and a note, under the hand and seal of the proper officer, of the fact of such registration is made on both duplicates of the instrument. Such note is conclusive evidence that the instrument has been duly registered ; one of the duplicates is then filed in the office, and the other is handed to the mortgagee or lessee. The certificate of title will thus show that the original proprietor is entitled to the land it describes, subject to the mortgage, lease, or encumbrance ; while the duplicate instrument held by the mortgagee, lessee, or encumbrancee, will show precisely the nature of his interest. Each person has, and can have, but one document of title, and this shows conclusively the nature of the interest he holds, and to that interest his title is indefeasible. If a mortgage is paid off, a simple receipt is endorsed on the duplicate mortgage held by the mortgagee. This is brought to the office, and the fact that the mortgage has been paid off is noted on the certificate of title. Here a striking inconvenience of the old system is done away with. Few things are more perplexing to simple minds than the necessity which that system imposes of a deed of reconveyance when a mortgage has been paid off. A mortgage under the Act does not involve a transfer of the 'legal estate,' although the mortgagee is made as secure as if such transfer had taken place. The necessity, therefore, for a deed of reconveyance, when the mortgage is paid off, at once vanishes. If a lease is to be surrendered, it has merely to be brought to the office with the word 'surrendered' indorsed upon it, signed by the lessor and lessee, and attested, and the proper officer will note the fact that it has been surrendered, on the certificate of title. Mortgages or leases are transferred by indorsement, by a simple form. The Act provides implied powers of sale and foreclosure in mortgages ; and in leases, implied covenants to pay rent and taxes, and to keep in repair, together with power for the lessor to enter and view the state of repair, and to re-enter in case of non-payment of rent or breach of covenant. All these may be omitted, or modified if desired. In order to save verbiage, short forms are provided, which may be used for covenants in leases, or mortgages, the longer forms which they imply being set out in the Act."

" Every person, therefore, entitled to a freehold estate in possession, has (if his land is subject to the Act) a certificate

of title, or land-grant, on which are recorded memorials of all mortgages, leases or encumbrances, and of their discharge or surrender. If he transfers his entire interest, a memorial of the transfer is recorded on the certificate, and the transferee takes it subject to recorded interests. The transferee can, if he chooses, have a fresh certificate issued in his own name, and in that case the old certificate is cancelled, and the memorials of the leases or mortgages to which the land is subject are carried forward to the new one. If a proprietor transfers only a part of his land, his certificate is cancelled so far, a fresh certificate is issued, and memorials of outstanding interests are similarly carried forward. Memorials of dealings with leases or mortgages are noted on the duplicate lease or mortgage held by the lessee or mortgagee, and on the folium of the register book. The officers of the department, therefore, and persons searching, can see at a glance the whole of the recorded dealings with every property ; while each person interested can see, by the one document he holds, the precise extent of his interest."

"The foregoing extracts give a very clear exposition of the general effect of the system of transfer *by registration*. It cannot be too emphatically pointed out that it is not the execution of the memorandum of transfer, lease or mortgage, *but its registration in the Lands Titles' Office*, that operates to shift the title. No instrument, until registered in the manner prescribed by the Act, is effectual to pass any estate or interest in any land under the operation of the Act, or to render such land liable to any mortgage or charge ; but *upon such registration*, the estate or interest comprised in the instrument passes, or the legal effect of the transaction, whatever it may be, is complete. Registration takes effect from the time of production of the instrument, not from the time of the actual making of the entry."

"The publicity attending an ordinary mortgage is sometimes avoided under the old system by an equitable mortgage. Registration of title does not do away with this mode of charging land, but an equitable mortgage or lien upon land, may be created by deposit of the grant or certificate of title. The following description of the practice as regards equitable mortgage is extracted from a pamphlet recently published by Sir R. R. Torrens* :—"The borrower executes a *contract*

* "An Essay on the Transfer of Land by Registration." London ; CASSELL, PETTER, GALPIN & Co.

for charge in the authorized form, either for a specified sum, or, as is more usual, for such sum as may appear due upon balance of account at any future date. This instrument, with the certificate of title, is held by the creditor, who does not register, but lodges a Caveat forbidding the registration of any dealing with the land until fourteen days, or other named period, have elapsed after notice of intention to register the same has been served by the Registrar at an address given. A red ink cross, with the number of the Caveat, is then inscribed on the proper folium of the register. The creditor, upon receipt of such notice, or at any time, may turn his equitable mortgage into a registered charge, by presenting the contract for charge with the deposited certificate of title at the Registry Office.

"A very important principle in the Torrens' system of registration of title, and one which should be most jealously guarded, if that system is to retain the simplicity which is the main spring of its success, is the non-recognition of trusts. No notice of trusts may be entered on the register, nor may any instrument declaring trusts be registered. The usual simple transfer must be registered, and the transferees, notwithstanding their fiduciary position, appear there as the registered proprietors for all intents and purposes. An instrument declaring the trusts may, however, be deposited in the Registry office for safe custody, and the rights of the persons beneficially interested are protected by the execution by the transferees of such an instrument, which is lodged in the Registry for safe custody and reference. A protection against fraud is provided by enacting that whenever the words "No Survivorship" are written on the instrument of title held by trustees, the land in respect of which they are registered cannot be dealt with by a less number of trustees than those registered, without the sanction of the Supreme Court. A Caveat prohibiting the registration of any dealing, except in accordance with the trusts so declared, may be lodged by any person interested in the trust-property, and the further protection of the interests of the beneficiaries is intrusted, in some Colonies, to the Registrar or Commissioner, who may lodge Caveats, &c. These safeguards do not interfere with the principle sought to be maintained, namely, that the trustee, being the registered proprietor, can give an absolutely indefeasible title to a person with whom he deals, and that beneficiaries, though the Caveats provide a check upon frauds and breaches of trust, must rely mainly on the integrity of their trustees.

"At first sight the introduction of the Torrens' system of Transfer by Registration would seem to take away from a large and powerful profession a valuable portion of their business and hand it over to a Government Department. Experience has proved, however, that the legal profession, if they co-operate cordially in introducing the reforms decided on, retain or increase their interest in the conveyancing business of a Colony. The work is simpler and less expensive, but the number of transactions is increased. There was in South Australia, on the first introduction of the measure, undoubtedly the results of which are apparent, not only in South Australia, but in other Colonies, to this day. The not unnatural opposition of the legal profession bred in the supporters of the new system, a jealousy of anything like a professional administration of the department.

"As long as there remain lands to be brought under the system, and, therefore, titles, evidenced by deeds more or less numerous, to be examined, it is obvious that the assistance of lawyers trained in the English system of conveyancing cannot be dispensed with. Land once brought under the Act should, however, save in exceptional cases, furnish no more work for the professional branch of the department, for the first investigation of title is final, and when once a certificate has been issued, the whole scheme is reduced to a system of indexing.

"REGISTRATION OF DEALINGS WITH LAND, UNDER THE REAL PROPERTY ACT.

"It is an essential part of the system of the Real Property Act that every instrument purporting to deal with any interest or estate in land subject to it must be registered in order to give legality to the transaction. It is the registration, not the signatures of the parties, which give such a transaction its binding force, and no change in the title is effected by an unregistered instrument.

"The principal transactions and instruments which have to be notified to the Lands Titles' Office, and registered there in order to give a valid title to any person claiming under them, are :—

- Transfer in fee.
- Lease
- Mortgage.

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Encumbrance or charge.

Endorsement of Transfer of Lease.

- Ditto of Mortgage.
- Ditto of Encumbrance.
- Ditto of Surrender of Lease.
- Ditto of Discharge of Mortgage.*

Power of Attorney.†

Transmission by Marriage.

- Ditto by Insolvency.
- Ditto by Will, or Intestacy.

Ft. fa., or Order or Decree of Supreme Court.

"TRANSFERS, LEASES, AND MORTGAGES."

"Of a transfer in fee, only one copy need be presented for registration ; a mortgage must be in duplicate, and a lease in triplicate.‡

"The instruments presented for registration are received by the Secretary, who, either personally or by one of his clerks, examines them to see that they fulfil all the requirements of the Act, namely, that they are free from erasures, properly witnessed and proved and certified "correct for registration" by the parties claiming interest, or by a solicitor, or licensed broker ; also that they are accompanied by diagrams, if necessary, and by the existing land-grant or certificate of title.

"The solicitors have to satisfy themselves that the transaction is one to the registration of which no objection exists, and for this purpose, they have to compare the original and duplicate and to see that the instrument is sufficiently clear and explicit, and that the parties are legally in a position to deal as proposed in it. According as they are satisfied, or otherwise, the solicitors will initial the instrument as correct, or will demand, through the Registrar-General, that an error be corrected, or a deficiency supplied.

"On being passed by the solicitors, the instrument is returned to the Deputy Registrar for registration.

"After registration, the memorandum of transfer is of no further use to the transferee, for he obtains, instead of it, either a new certificate declaratory of his title, or else, if he prefers it

* In some Colonies, Extension of Mortgage also.

† In Victoria, a Power of Attorney is registered with the Registrar-General under the old law. Other colonies, New Zealand for instance follow the South Australian practice.

‡ In duplicate only, in some Colonies.

(where the whole of a holding is transferred), the original land-grant or certificate, with a memorial recording the transfer.

"If the fee of part only of the land included under an existing grant or certificate of title be transferred, the transferee gets a certificate for the portion acquired by him, while the proprietor has the choice either of leaving in the office his old certificate, cancelled as to the portion transferred, with the view of ultimately disposing of the remainder, or of taking out a new certificate for the balance of the land retained by him, his old certificate being altogether cancelled.

A proprietor who intends to sub-divide his land with the view of disposing of it in lots is required to deposit in the Lands Titles' Office a plan, in duplicate, certified by a declaration of a licensed surveyor, in which all allotments, streets, &c., must be distinctly delineated, the allotments being marked with numbers or symbols.

"ASSIGNMENT, &C., OF MORTGAGES, ENCUMBRANCES, OR LEASES.

"Mortgages, encumbrances, and leases, may be transferred by a simple endorsement written upon the copy of the instrument retained by the proprietor of the interest dealt with, and duly registered.*

"The surrender of a lease is effected by endorsing the simple word "Surrendered," signed by the lessee, and "Accepted" by the lessor, this being attested in the prescribed manner and duly registered.

"A mortgage or encumbrance may be discharged by the simple endorsement on the instrument of a receipt for the money secured, signed by the party entitled, attested by a witness, and duly registered.†

TRANSMISSION.

"Upon the death of the proprietor of any land which is subject to the real Property Act, his executor or administrator makes an application in writing to the Registrar-General to be registered as proprietor, producing in substantiation of his claim the duplicate grant or certificate of title, and the probate, or letters of administration. This is received, entered and ex-

* In New South Wales, a special form of transfer is in use. Forms of instruments often vary according to the practice of Solicitors in different localities. Attestation by one witness is required in New Zealand.

† In Victoria, the word "Discharged" and the date are endorsed in the office.

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amined in the manner above described relating to transfers, and a memorial is entered on the duplicate grant or certificate of title and in the Register-book, recording the date of the will and probate, or of the letters of administration, the date and hour of their production, the date of the death of the proprietor, etc. This having been done, the executor or administrator becomes the registered proprietor, holding in trust for the persons beneficially entitled, and his title has relation back to the time of the death of the deceased proprietor. The fact of this registration has to be noted on the probate of the will, or letters of administration, &c.*

"If the registered proprietor of an estate or interest in land becomes insolvent or makes any statutory assignment for the benefit of his creditors, his assignees or trustees are entitled to be registered as proprietors in respect of the same. An application in writing is made by them to the Registrar-General to have the particulars of their appointment entered in the register-book, and evidence of such appointment is furnished to him. A memorandum notifying the same having been entered in the register-book, the trustees become the proprietors of the estate or interest of the insolvent, or assignor, in the land.

LOSS, OR DESTRUCTION, OF CERTIFICATE, OR GRANT.

"The proprietor of land whose grant or certificate of title has been lost, mislaid, or destroyed may obtain a "provisional certificate"† from the Lands Titles' Office which is an exact copy of the duplicate bound up in the Register-book with all the memorials (if any) recorded thereon. He has to make a statutory declaration setting out the facts and all particulars affecting the title; the order of the Commissioners has to be obtained, and the intended issue of the provisional certificate must be notified by advertisement.

"Any one who chooses to apply for it may obtain, upon payment of a small fee, a certified copy of any registered instru-

* In South Australia the Lands Titles' Office gives a title to the executor, administrator, or curator of intestate estates, and leaves him to settle with the persons entitled. In some of the other Colonies, when a freehold estate is transmitted, the devisee, heir-at-law, or tenant by courtesy, must make an application to be registered similar to the application for bringing lands under the Act, depositing also the grant or certificate of title, the will and probate, or the settlement, under which he claims, or, in the case of intestacy, evidence of heirship. The claim is then advertised and, failing caveat, a certificate issues in due course.

† Called "special certificate" in Victoria.

ment affecting land under the provisions of the Act, and this is available as evidence in all Courts of Justice.

NEW CERTIFICATES.

"A registered proprietor who desires to have a certificate of title free from memorials disclosing past liabilities or transactions, which no longer affect the land, may surrender his existing certificate, and obtain a clean one on payment of a moderate fee.

"Similarly, a registered proprietor may surrender two or more grants or certificates for contiguous lands, and take out one certificate for the whole ; or, if he so desires, he may surrender a single grant or certificate, and take out as many new certificates as he chooses there shall be subdivisions of his land, paying the prescribed fees in either case."

"Such is the system which, in the Australian Colonies, has, in a great measure, superseded the cumbrous, tedious, uncertain, and costly system of conveyancing, and which Sir R. R. Torrens states 'has been tested by an experience of over twenty years, during which upwards of 539,000 transactions of various kinds have been completed at a reduction in cost from pounds to shillings, and in time from months to days.'

COST OF BRINGING LAND UNDER THE NEW SYSTEM IN ONTARIO.

The principal objection that has been urged against the Torrens' system, is the expense that will attend its introduction. Those who thus argue unconsciously prove the necessity for a change. What better argument against the present system can there be than the fact that, under it, titles to land are so complicated, and uncertain, that the expense of a judicial investigation must be incurred before they can be authoritatively pronounced upon ? The probable expense has, however, been very much exaggerated. Under the present system, to say nothing of the expense of disputes and costly lawsuits arising out of this fruitful source of litigation, the annual cost to the country for Registrars', Sheriffs', and Treasurers' abstracts and certificates ; Solicitors' fees for investigation, preparation of deeds, and the responsibility incurred, and for hunting up

evidence on points not shewn on the registers, in a few years amounts to far more than will be the whole cost of placing landed proprietors in such a position that these expenses will never again be necessary. In the office of a legal firm in Toronto, there has been an average expenditure for the last twenty years, of fifteen hundred dollars annually, for sheriffs' certificates, that no executions are held against persons who were perfectly solvent, all of which was therefore wasted. From this one item, in one office alone, some idea may be formed of the enormous annual cost to landowners of the present system. There would be some satisfaction if these investigations were final ; but instead of this they have to be repeated every time a transfer takes place, and with ever increasing expense. As to the cost of bringing land already alienated from the Crown under the new system, we have the evidence of Colonel Leach before the Royal Commission, that the entire expenses, including the examination of documents, the perambulation of the property, the preparation of maps &c., have, in Australia, varied from £3, the lowest, to £20, the highest. The expense appears in many cases to have been increased by reason of the absence of or defects in original surveys. In Ontario it is estimated that seventy-five per cent of the whole of the land is now held under short and easily examined titles, and could be readily and inexpensively brought under the Torrens' System ; twenty per cent. with more time and expense, and that from three to five per cent. would be rejected, or registered under possessory certificates. It appears that in most, if not all the colonies, the fees charged (exclusive of the assurance fund) are sufficient to pay all salaries and expenses connected with the Registry Offices, and in South Australia there is an excess of revenue over expenditure of £10,000 annually, showing that the fees are much higher than necessary.

THE ASSURANCE FUND.

As the Government is responsible for the acts of its officers, and for the indefeasibility of the titles held under the Registrar's

certificates, it was considered advisable in the Australian colonies, with a view to indemnify the Government against possible claims, to charge a small fee or commission on the value of all lands brought under the Torrens' System. This fee in most of the colonies is one half penny in the pound, or about one-fifth of one per cent. In Tasmania the fee is only one farthing in the pound, or one-tenth of one per cent. It is reckoned and charged on the value of the land when first brought under the new system, and afterwards only when it passes by descent, or devise. Small as the fee is, it has been found in every case to be much larger than necessary. In South Australia the assurance fund had accumulated in 1879 to more than £60,000. In Queensland in 1879 to £11,248. In New Zealand to £26,637. In Victoria in 1880 to £61,104. In New South Wales to £38,060. In Tasmania ($\frac{1}{4}$ d. in the pound) £3,683. These figures together with the fact that the claims upon the fund have been few and unimportant, and that in some colonies no claim whatever has been made upon it, shew that the fee of one halfpenny in the pound is unnecessarily large. A much smaller charge should suffice in Ontario, if indeed it might not be altogether dispensed with. Short and simple forms are provided by using which there is no greater liability to error than in similar dealings with Bank stock, or Government bonds. Then again, it is not the fault of the land owners exclusively that their titles require quieting. It results from the country having adopted a defective system. And to what better purpose could a portion of the surplus funds of the Province, say \$100,000, be appropriated, than to the formation of this Assurance Fund. The surplus Registry fees, which are entirely contributed by land owners, are applied to general purposes, and why, therefore should not a portion of the public funds be used in facilitating the removal of this burden, placed by law on land. If the fee were to be charged only when the land passes by descent, or devise, and the surplus Registry fees, past and future, were applied to the formation

of an Assurance fund, and I see no good reason why they should not be so applied, it would probably be more than sufficient to meet all claims upon the Government.

STATISTICS OF TRANSACTIONS.

The following statistics may serve to show to what extent lands have been brought under the Torrens' system in the countries where it is in operation, and what transactions have taken place under it.

IN Victoria the following were the registered transactions of two years :—

	1880	1881
Application to bring land under the Act..... number	865 ..	1,256
Extent of land included..... acres	50,764 ..	64,990
Value of land included..... £	1,018,150 ..	1,451,193
Certificates of title issued..... number	10,066 ..	13,977
Transfers, mortgages, leases, releases, surrenders, &c..... "	18,015 ..	23,993
Registering proprietors..... "	311 ..	36
Other transactions (not includ- ing copies of documents sup- plied)	" 20,234 ..	22,310

The total quantity of land under the Transfer of Land Statute at the end of 1881 was 8,557,614 acres, the declared value of which, at the time it was placed under the Act, was £22,391,876. The land granted and sold up to the end of 1881 was 12,614,400 acres. It therefore follows that at that period over two-thirds of the alienated land in the colony was subject to the provisions of this Statute.

In New South Wales, in the ten years from 1872 to 1881 inclusive, the number of applications to bring property under the new Real Property Act was 2335, involving property of the value of £2,732,684 stg. In the six years ending with 1881 the number of transactions registered under the Act was 42,738, and the value of the land affected £34,001,818 stg. The returns show a large increase in the number of transactions each year.

In South Australia, in the ten years ending with 1881, the number of transactions registered under the new Real Property Act was 135,525 affecting property of the value of £7,383,736 sterling.

In Queensland 98.18 per cent. of the whole of the land alienated from the Crown is under the new Real Property Act, and the number of transactions from 1862 to June 1880 inclusive was 170,355.

In Tasmania, on the 31st December, 1879, registrations as follows had been effected :—5,241 certificates of title and 5,082 land grants, including 12,600 acres town land, and 702,041 acres country land, valued at £1,442,941 ; 2,274 Mortgages, securing £913,259 ; 2,785 transfers, conveying 4,451 acres town land and 274,962 acres country land, for the sum of £639,926 ; 1,005 releases of mortgage relating to £372,878 ; 112 assignments of mortgages relating to £57,429 ; 112 leases of 98 acres town land and 49,696 acres country land.

In New Zealand the total area of land alienated from the Crown to 31st March, 1880, was 14,126,772 acres, of which there had been brought under the Land Transfer Act 4,585,-557 acres. From the Annual report on Land Transfer Registration for the year ending 31st March, 1882, it appears that during that year the following work was done :—

Number of applications to bring land under the Act	...	...	1,201
Number of transfers	...	...	7,715
Number of mortgages	...	...	5,883
Receipts (exclusive of Assurance Fund)	...	...	£23,586

In British Columbia in the nine and a-half years ending with 1879, 5607 instruments representing 2687 Absolute fees of property valued at \$3,199,487 were registered under the Land Registry Ordinance of 1870, which with \$1,500,000 previously registered gives \$4,699,487 value of Registered Lands out of a total of \$5,500,000 in Vancouver Island. I have not seen full statistics for the Mainland, but it appears that 814 Instruments were recorded under the old system as against 10.-770 under the new.

HOW DOES THE NEW SYSTEM WORK?

My reason for giving these statistics is to prove that by length of time, and by the number, kind, and value of the transactions under it, the Torrens' system has been sufficiently tested to demonstrate whatever advantages or disadvantages it possesses.

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And what is the testimony of the Countries which have tried it? Fortunately we have evidence which cannot be questioned on this point. I quote the following from a Blue Book published by order of the British House of Commons in 1881. The information was furnished to the English Government by the Governors of the several Colonies in reply to an inquiry as to the working and progress of the System of Registration by title as established in the Australian Colonies.

SOUTH AUSTRALIA.

The Registrar-General writes : " In obedience to the Honourable the Attorney-General's direction I have the honour to forward reports by Mr. Gawler and Mr. Turner, the Solicitors to the Lands Titles' Commissioners, on the working and progress of the system of Conveyancing by Registration of Title in South Australia, and, in doing so, have to say that the office is working satisfactorily, and the system is in great favor with the public of this colony."

Mr. Gawler, a barrister of the Middle Temple, and for twenty years Examiner of Titles, Adelaide, writes :—

"Up to the present time (October 1880) no difficulty whatever has occurred in carrying out the ordinary transactions in land, such as transfers, mortgages and leases, and there can be no question that, as regards such transactions, the "Torrens" system" is a perfect success, land, in fact, being as easily and securely dealt with as stock in the funds.

As to indefeasibility of Title: This important result of the "Torrens" system" of registration of title has not yet been upset. The only instances in which a Certificate of Title has been ordered by the Supreme Court to be cancelled are as follows :—

1st. A Certificate in the hands of voluntary transferees from a person who had succeeded in bringing his land under the Act, and obtained a Certificate of Title in his own name by misrepresentation and a fraudulent abstract of title; the volunteers were trustees under the will of the first certificate holder,

and they subsequently transferred to the persons entitled under the will ; such subsequent transferees were also, of course, only volunteers.

2nd. A Certificate in the hands of voluntary transferees from a person who was proved to have been insolvent at the time of executing the transfer ; the transfer being, therefore, void as against creditors."

QUEENSLAND.

The Registrar-General writes:—"In the great bulk of transactions the general public have not recourse to professional assistance, the prevailing opinion being that the filling up of forms is so simple that legal advice is unnecessary ; but this does not apply to the bringing of land under the Act, by applications, or transmissions of property, through death of registered owner, as in such cases professional assistance is almost invariably resorted to.

There does not appear to be any difficulty in the working of the Acts as to mortgages and leases. The Real Property Acts have greatly facilitated mortgages and leases, the simple form of mortgage and release allowing small sums of money, raised on mortgage, to be promptly registered at very little cost."

NEW ZEALAND.

The Registrar-General writes :— "To the extent to which 'The Land Transfer Act, 1870,' purports to secure indefeasibility of title, there is no reason to doubt that the object has, from a legal point of view, been effectually attained. There are few questions ordinarily incident to conveyancing, with which the Land Transfer Department is not called upon to deal, in bringing land under the Act. Titles complicated by wills, settlements, etc., are not unfrequent, and but few have been rejected. The system of caveat is found sufficient for the conservation of trusts, whilst life estates, and estates in reversion or remainder, are fully capable of definition on the register. In fact the system has so far been found equal to all purposes of conveyancing."

WESTERN AUSTRALIA.

The Commissioner of Land Titles writes :—"I am not aware that any title registered under the Act has been upset, or that

there has been any litigation affecting the principles of the Act.

Little or no alteration has been made in the principles of "The Land Transfer Act, 1874." Apart from the survey difficulty, it is, I think, generally conceded, that the system introduced by that Act has worked satisfactorily, and has effected an important reform in the law of real property."

VICTORIA.

The Commissioner of Titles writes :—"The majority of applicants to bring land under the Act now employ solicitors, as the titles now brought in, from the increased time they have existed, are longer and more complicated than formerly, the Act applying only to land alienated before October 1862. In a few simple and clear cases the applicants conduct their own cases, but in nearly every case they are complicated and difficult questions and unsettled claims to be cleared up, which solicitors are more capable of dealing with, than lay persons, from their better knowledge of the subject and of how to go about the business. Applications to bring the land under the Act are generally made when the parties are dealing with the land, and the expenses of passing the title through the office must vary according to the business to be transacted, but must be much less than would have to be incurred in the investigation and making good titles as between vendor and purchaser under the old system, from the fact that requisitions are only made by the office upon questions involving some substantial interests, and the compliance with them is not required to be of such a formal character as would be the case under the old system. Besides, the office has acquired much information upon the titles, which applicants have the benefit of. As regards property when under the Act, the dealings are also generally conducted by professional men, and difficult questions frequently arise upon the construction of the Act and the rights of parties. These are generally settled by the Commissioner, whose decisions have almost invariably been acquiesced in. The power to reject applications, or to refuse or allow dealings to be registered, or certificates to be issued, is vested in the Commissioner. If he refuses, he can be called upon to state his grounds of refusal, which can be taken before the Supreme Court ; but, although in some few cases grounds have been asked for and given, there has been but one taken before the

Supreme Court since the Despatch of August 1870, and that was within the last few months, and upon the construction of a will, in which the refusal to give an unconditional certificate was upheld by the Court ; consequently it may be inferred that the Act has been administered to the satisfaction of the public and the profession."

"The proportion of land under the Act is now about 7,557,715 acres, or nearly one-eighth of the whole land of the colony. Titles of every sort and kind, simple and complicated, have been registered, and from the value of £5 to £100,000 and more ; and, as before stated, owing to the lapse of years, and increased number of dealings, the titles of late years have been much longer and more complicated.

The facilities for carrying out mortgages and paying them off under the Act are very great, and thoroughly appreciated by the public. The expense of either transaction is comparatively trifling."

NEW SOUTH WALES.

The Registrar-General writes :—" While on the subject of fees, I may, perhaps, be permitted to mention that the Land Titles' Office is entirely self-supporting, as sufficient revenue now passes through the office to meet all expenses.

Although the Act has been in operation for nearly eighteen years, no compensation has been made for the deprivation of property, nor has any claim been sustained against the Assurance fund, which, at the present time, amounts to £38,060.

The progress of the Act has been steady, and I may say highly satisfactory, and, so far as the transactions under it are concerned, very rapid.

The measure, which was at first received with some degree of suspicion as to its practicability, particularly with regard to trust estates, has won its way with the legal as well as the lay element of the community.

The popularity of the Act is so well secured, and the public generally have become so accustomed to our certificates, and have acquired such faith in their undoubted value, as in many instances to decline accepting a property except the title

is registered under what is universally styled 'Torrens's system.'

The Hon. Thomas Holt, M.L.C. writes:—"The working men of New South Wales are almost all becoming landed proprietors; but hardly one of them would ever attend a sale of land if it were not announced in the advertisement that the title was that of the Torrens' Act."

TASMANIA.

The Recorder of titles writes:—"Upon reviewing the operations of 'The Real Property Act,' with which I have been officially connected from its commencement in this Colony (1st July 1862), I can come to no other conclusion than that title by registration is a simple, expeditious, and economical method of dealing with land, untrammelled by the costly and complex machinery of the old mode of conveyancing; and being free from technicalities, with the exercise of vigilant care and caution as to accuracy, the new system of land transfer may commonly be worked by any person possessing ordinary intelligence, and business capacity."

BRITISH COLUMBIA.

The Registrar General writes:—"1st. The title to real property has been greatly simplified, without radical changes in the general law.

2nd. Stability of title, with safety to purchasers and mortgagees, has been secured.

3rd. The ownership of property, either in town or country, is shewn by the register at a glance, and whether incumbered or not.

4th. It increases the saleable value of property.

5th. It enables both vendors and purchasers to accurately ascertain the expenses of carrying out any sale or transfer.

6th. It protects trust estates, and beneficiaries.

7th. It prevents frauds, and protects purchasers and mortgagees from those misrepresentations common in all countries amongst a certain class of legal practitioners and land agents.

8th. It has secured the chief advantages of the old system of registration of deeds (of which notice is the most important principle), and has operated so as to almost entirely dispense with the investigation of prior title.

Loans on mortgage are effected, and transfers of the fee are made, with as much ease as the transfer of bank stock is made in England, a search of from five to ten minutes being all that is necessary to disclose the state of any registered title."

Other proofs of the popularity and efficiency of the new system could be furnished if necessary. The unvarying testimony is overwhelmingly in its favor, not only as a mere method of transfer, but as a system sufficiently elastic and comprehensive to meet all the requirements of modern times for dealing with, or charging land.

CONCLUSION.

In conclusion I desire to impress upon every lover of his country, *First*—The paramount importance of each local Government providing, as speedily as possible, for the adoption of the principle of conveyance of land by Registration of Title, in the several Provinces of the Dominion. Every year adds materially to the difficulty and expense of its introduction. And *Second*—The urgent necessity there is for the Canadian Government to provide at the outset, a simple, safe, and inexpensive system of Land Transfer for the New Territories of the North-West. In the older Provinces, a great portion of the public domain has been already alienated, and with regard to such lands, it would not be practicable for some time, to make transfers under the new system compulsory. Land owners will soon see its advantages, and as opportunities occur, avail themselves of them; but it will probably be many years after the adoption of the Torrens' system before a very large proportion of the alienated land is brought under it. In the North-West the lands as granted by the Crown would at once be brought under the new system, and the

trouble and expense of changing would be avoided. It will be a grave mistake, if not a lasting disgrace, if, now that an unquestionably better method is known, an antiquated and condemned system, with all its uncertainties, and cumbrous and costly machinery, be inflicted upon the virgin soil of the hope of our Dominion, the Great North-West. Whoever shall emancipate land from this relic of feudalism, give legislative effect to the Torrens' System of Transfer by Registration ; simplify and make uniformly operative the law of descent ; abolish general liens and all charges created by operation of law, without registration ; and make land as safely and easily dealt with as registered stock or bonds, will not only be entitled to the thanks of the present generation of his countrymen, but merit the gratitude of millions yet unborn.